

CHAPTER LXII

GENERAL WETLANDS BYLAWⁱ

62-1 PURPOSE.

The purpose of this By-Law is to protect the wetlands, floodplains, water resources, and adjoining land areas in the Town of Topsfield by prior review and control of activities deemed by the Conservation Commission ("the Commission") likely to have a significant or cumulative effect on wetland values, including but not limited to the following:.

- a. Public or private water supply;
- b. Groundwater or surface water;
- c. Flood control;
- d. Erosion or sedimentation control;
- e. Storm damage prevention;
- f. Water quality;
- g. Water pollution prevention;
- h. Fisheries;
- i. Wildlife habitat;
- j. Recreation.

Collectively, the "interests protected by this By-Law".
(Art. 58, 5/2/89 ~ 1)

62-2 JURISDICTION.

Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:

- a. Freshwater wetlands;
- b. Bodies of water;
- c. Land under water;
- d. Banks;
- e. Vernal Pools;
- f. Land within one hundred (100) feet of Freshwater Wetlands, Bodies of Water, Land Under Water, Banks or Vernal Pools;
- g. Riverfront Area ;

- h. Land Subject to Flooding;
- i. Isolated Wetlands 5,000 square feet or less in size that are within the 100-foot Resource Area of a wetland, stream, or within Riverfront Area.

Any activity proposed or undertaken outside the above areas is not subject to regulation under this By-Law and does not require the filing of a permit application unless and until that activity actually affects or alters any of the resource areas.

In the event that the Commission determines that such activity has, in fact, affected or altered a Resource Area as identified in this By-Law, it shall impose such conditions on the activity or any position thereof as it deems necessary to contribute to the protection of the interests identified in this By-Law. (Art. 58, 5/2/89 ~ 2; Art. 42, 5/2/2000 ~ 2; Art. 33, 5/3/2005~2)

62-3 DEFINITIONS.

Except as otherwise provided in this By-Law or regulations of the Commission, the definitions of terms in this By-Law shall be as set forth in the Wetlands Protection Act, GLc 131 ~ 40, and in 310 CMR 10, as amended from time to time.

The following definitions shall apply in the interpretation and implementation of this By-Law:

Freshwater Wetland shall mean and include any marsh, bog, swamp or wet meadow, whether or not it borders on water. The wetland may be defined by its vegetational community, soil composition or hydrologic regime. A wetland not bordering on a body of water and not exceeding five thousand (5,000) square feet shall not be subject to protection under this By-Law.

Body of Water shall mean any lake, pond, river or stream, whether intermittent or not, man-made or natural.

Stream shall mean a body of running water, including rivers, brooks, creeks and seasonal watercourses, that moves in a channel or swale, with or without banks, over the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert or subsurface drain or under a bridge. A stream may be natural or man-made, continuous or intermittent. (Art. 33, 5/3/2005)

A perennial stream is one that normally flows year-round. There are various reasons for a perennial stream to have low flow, such as during times of drought, due to water withdrawals, as the result of beaver activity, and as the result of human activities such as dam construction or water diversion. Perennial streams in Topsfield include, but shall not be limited to, the following:

Ipswich River – Boxford town line to the Ipswich town line

School Brook - Howlett Street to the Ipswich River

Cleveland Brook – Gail Street to School Brook

Pye Brook – Boxford town line and Hood's Pond to Howlett Brook

Howlett Brook – Pye Brook to the Ipswich River

Mile Brook – Pye Brook to the Ipswich River

Fish Brook – Boxford town line to the Ipswich River

Nichols Brook – Danvers town line to the Ipswich River

Cow Pen Brook – Wetland behind Perkins Row to Mile Brook

Slough Brook – Washington Street to the Ipswich River

Hobbs Brook – Ipswich town line near East Street to Howlett Brook

Unnamed Stream – behind 10 Surrey Lane to Fish Brook

Wheel Brook – Salem Beverly Water Supply Board pond at Route 1 to the Danvers town line (Art. 33, 5/3/2005~3)

Riverfront Area shall mean the area of land measured horizontally 200 feet from the mean annual high water line of a perennial river or stream. Mean Annual High Water shall mean the farthest horizontal extent of flooding in an average year. When determining the extent of said flooding, the Commission shall employ indicators such as changes to vegetational communities; stain lines on abutments, rocks, trees and culverts; fluvial deposits; changes in slope; bank undercuts; and other easily identifiable indicators of the presence or flow of water. When available from a reliable public source, gauge data may also be used to aid in the determination of the extent of the flooding in an average year.

Land Subject to Flooding shall mean and include all land subject to inundation by ground or surface water, including land within the one hundred (100) year floodplain, isolated land subject to flooding, and bordering land subject to flooding.

Flood Plain shall mean bordering land subject to flooding as defined by 310 CMR 10.57 (2)(a) as may be amended from time to time.

Alter shall mean to change the condition of any area subject to protection under this By-Law. Examples of alterations include, but are not limited to the following:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage or other disturbances of water level or water table;
- d. Dumping, discharging or filling with any material which may degrade water quality;
- e. Placing of fill, or removal of material, which would alter elevation;
- f. Driving of piles, erection or repair of buildings, or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life including cutting of trees;
- i. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- j. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- k. Application of pesticides or herbicides.
(Art. 58, 5/2/89 ~ 3 : Art. 42, 5/2/2000 ~3)

62-4 FILING PROCEDURE.

Permit applications, which may be identical in form to a State notices of intention as required pursuant to GLc 131 ~ 40, shall, at a minimum, have the same content as that required by those notices of intention. The applications must include such plans as may be necessary to describe the proposed activity and its effect upon the interest protected by this By-Law. No work shall begin until the permit, which may be the same as the Order of Conditions issued under GLc 131 ~ 40, has been issued, all appeal periods have expired, and said permit has been recorded with the Registry of Deed or Land Court in accordance with Section 62-18 of this By-Law.

The application shall be sent by certified mail, return receipt, or hand delivered to the Administrator of the Topsfield Conservation Commission at the Town Hall, or in his/her absence to the Town Clerk. No such applications shall be sent before all permits, variances, and approvals required by local By-Law with respect to the proposed activity have been obtained. Except that, at the option of the applicant, such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the interests protected by this By-Law.

The applicant shall pay fees as specified in the regulations adopted under this By-Law. The Commission may waive the fees, costs and expenses for an application or request filed by a government agency. (Art. 58, 5/2/89 ~ 4; Art. 42, 5/2, 2000 ~ 4)

62-5 ENTRY UPON PRIVATE PROPERTY.

The Commission, its agents, officers and employees, may enter upon privately owned land for the purpose of performing their duties under this By-Law. (Art. 58, 5/2/89 ~ 5)

62-6 REQUEST TO DETERMINE IF BY-LAW APPLIES.

An applicant may submit a written request to the Commission for a determination of the applicability of this By-Law to any land or work thereon. Upon receipt of said request, the Commission shall, within twenty-one (21) calendar days, make a written determination as to whether this By-Law is applicable to the land or work as described by plans submitted with the request, unless an extension is authorized in writing by the applicant. (Art. 58, 5/2/89 ~ 6)

62-7 HEARING.

When an application for a determination of applicability or for a permit as provided in Section 62-4 and 62-6 has been submitted to the Commission, a public hearing on said application shall be scheduled by the Commission within twenty-one (21) calendar days of the date of submission as determined by the date of receipt, unless an extension is authorized in writing by the applicant. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be given by the Commission (at the expense of the applicant) by advertisement in a newspaper of general circulation in Topsfield at least five (5) business days prior to the date of such hearing and by mailing a copy of such advertisement to the applicant. The applicant shall notify all owners of land within 100 feet of the land included in such plan of the Commission hearing and the subject matter. The applicant shall present evidence of having complied with this requirement prior to the advertised hearing. (Art. 58, 5/2/89 ~ 7; Art. 42, 5/2, 2000 ~ 7)

62-8 BURDEN OF PROOF.

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not adversely affect the interests protected by this By-Law. The Commission may, if a majority of its members deem it necessary in order to make a decision before issuing a permit, require that the applicant provide an engineering, hydrogeological or other study. No engineering, hydrogeological, or other study, shall commence until such time as the applicant has agreed in writing, to the specified study. The costs of such studies are to be borne by the applicant. Selection of a consultant to perform a required study shall be subject to the approval of the Commission which approval shall be based on the experience, qualifications and credentials of the consultant.

Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not adversely affect the interests protected by this By-Law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or in the Commission's discretion to continue the hearing to another date to enable the applicant or others to present additional evidence. The Commission and the applicant may also mutually agree to continue the hearing. (Art. 58, 5/2/89 ~ 8)

62-9 PERMIT AND CONDITIONS.

The Commission shall issue a permit to the applicant or, if in the opinion of the Commission the proposed work described in the application may adversely affect the interests protected by this By-Law, deny such permit within twenty-one (21) calendar days after the conclusion of the public hearing or such further time as may be agreed upon at the written request of the applicant. In the permit or denial, the Commission shall set forth in what manner the interests of this By-Law are affected. The Commission may impose such conditions as it determines are necessary to protect those interests. All work shall conform to the conditions set forth in the permit.

In the event of a denial of an application, the Commission shall set forth in detail the reasons for the denial. The Commission shall send notice of such action to the applicant by certified mail at the address stated on the application.

Permits shall expire three (3) years from the date of issuance. An applicant may apply for an extension at least thirty (30) calendar days prior to the expiration of the permit or extension and the Commission may grant extensions for one (1) or more periods of up to three (3) years each. (Art. 58, 5/2/89 ~ 9; Art. 42, 5/2/2000 ~ 9)

62-10 AMENDMENTS TO PERMITS.

The conditions contained in the permit issued under the provisions of Section 62-9 may be amended by the Commission with the consent of the applicant. Amendments that may be approved by the Commission shall be limited to the following:

- a. Amendments by deletion provided that such deletions do not derogate the intent and purpose of the permit conditions.
- b. Perfecting amendments, inclusive of, but not limited to, the correction of typographical errors, and errors of reference.
- c. Amendments that alter the scope but not the intent of the particular condition being amended.

The Commission shall not approve any amendments to conditions contained in permits for work that has been completed in accordance with the provisions contained in the original permit.

For good cause the Commission may revoke or modify a permit issued under this By-Law, after notice to the holder of the permit, notice to the public, abutters and a public hearing. (Art. 58, 5/2/89 ~ 10)

62-11 APPEALS.

Any aggrieved party may appeal the action or inaction of the Commission. Appeals may be taken as provided by GLc 249 ~ 4 as amended. (Art. 58, 5/2/89 ~ 11)

62-12 EMERGENCY PROJECTS.

The notice provisions of this By-Law shall not apply to emergency projects initiated by the Town of Topsfield or other governmental Boards, Agencies, or Commissions necessary for the immediate protection of public health, safety and welfare within Topsfield. However, the Commission shall be notified within twenty-four (24) hours of the commencement of such projects. In the absence of members of the Commission, notification may be made to the Board of Selectmen or Board of Health. A certificate of emergency condition shall be filed with the Commission by the Board, Agency, or Commission which authorized the project, within fourteen (14) days after the initiation of work. (Art. 58, 5/2/89 ~ 12; Art. 42, 5/2/2000 ~ 12)

62-13 PRE-ACQUISITION VIOLATION.

Any person who purposes, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this By-Law or in violation of any order issued pursuant to this By-Law, shall forthwith comply with an order to restore such real estate to its condition prior to any such violations or to comply with conditions determined by the Commission if restoration is impractical. No action by the Town of Topsfield, civil or criminal, shall be brought against such person unless commenced within three (3) years of the acquisition of the real estate. (Art. 58, 5/2/89 ~ 13)

62-14 RULES AND REGULATIONS.

After due notice and public hearing, the Commission shall promulgate regulations and procedures for compliance with this By-Law, a copy of which shall be filed with the Town Clerk. Failure by the Commission to promulgate such procedures or a legal declaration of their invalidity by a Court of Law shall not act to suspend or invalidate the effects of this By-Law. (Art. 58, 5/2/89 ~ 14)

62-15 SEVERABILITY.

The invalidity of any section or provision of this By-Law shall not invalidate any other section, nor shall it invalidate any permit or determination which previously had been issued. (Art. 58, 5/2/89 ~ 15)

62-16 SECURITY.

As part of a permit issued under this By-Law, in addition to any security required by any other Municipal or State Board, Agency or Official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below and which have been approved by Town Counsel:

a. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission;

b. By a conservation restriction, easement or other covenant enforceable in a Court of Law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality

whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. (Art. 58, 5/2/89 ~ 16)

62-17 ENFORCEMENT.

The Commission shall have authority to enforce this By-Law, its regulations, and permits issued thereunder by violation notices, enforcement orders, and civil and criminal Court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

In addition to the duties previously set forth in this By-Law, the Commission, its agents, officers and employees, and any Officer with Police powers may issue enforcement orders directing compliance with this By-Law and may undertake any other enforcement action authorized by law. Any person who violates the provisions of this By-Law may be ordered to restore property to its original condition and take other actions deemed necessary to remedy such violations.

No person shall remove, fill, dredge or alter any area subject to protection under this By-Law without the required authorization, or cause, suffer, or allow such activity or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this By-Law. Each day such violation continues shall constitute a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Conservation Commission and the Department shall not be subject to additional penalties unless said person thereafter fails to comply with an enforcement order or order of conditions.

a. Criminal Complaint. Whoever violates any provision of the General Wetlands By-Law, regulations thereunder or permits issued thereunder may be penalized by indictment or on complaint brought in District Court. Except as may otherwise be provided by law, and as the District Court may see fit to impose, the maximum penalty for any violation of these provisions shall be three hundred (\$300.00) dollars for each offense. Each day on which any violation exists shall be deemed to be a separate offense.

b. Non-Criminal Disposition. In addition to the procedure set forth in paragraph a., the provisions of the General Wetland By-Law may also be enforced by the Conservation Administrator or a Police Officer of the Town, by a non-criminal complaint pursuant to the provisions of GLc 40 ~ 21D. Each day on which any violation continues to exist shall be deemed to be a separate offense.

The penalties for violation of any provision of the General Wetlands By-Law shall be as follows:

	Buffer Zone	By-Law Resource Area (other than Buffer Zone)	Non-Compliance with an Order of Conditions or Enforcement Order
1st Offense	\$ 50.00	\$ 100.00	\$ 200.00
2nd Offense	200.00	200.00	300.00
3rd Offense	300.00	300.00	300.00
and any subsequent			

(Art. 58, 5/2/89 ~ 17; Art. 42, 5/2/2000 ~ 17)

62-18 RECORDING OF PERMITS AND ADJUSTMENTS THERETO.

Prior to the commencement of work subject to any permit issued under the provisions of Section 62-9 and any amendment thereof approved under the provisions of Section 62-10, the permits and amendments thereto shall be recorded with the Essex County Registry of Deeds; or in the event that the

permit has been issued for work on registered land, with the Land Court of the Commonwealth. A copy of the recorded permit shall be submitted to the Commission. (Art. 58, 5/2/89 ~ 18)

ⁱ Editor's Note: Article 58 of the Annual Town Meeting held on 5/2/89, which has an effective date of July 20, 1989, was approved by the Attorney General on July 5, 1989. This amended the By-Law adopted by the Annual Town Meeting 5/3/83. Article 42 of the Annual town Meeting held on 5/2/2000, which has an effective date of August 9, 2000, was approved by the Attorney General on August 9, 2000. This amended the By-Law adopted by the Annual Town Meeting 5/2/89. Article 33 of the Annual Town Meeting held on 5/3/2005, which has an effective date of August 30, 2005, was approved by the Attorney General on August 19, 2005. See also Division II, Wetlands Regulations which were adopted by the Conservation Commission.